

LAURA J. SPANGLER

IBLA 78-195

Decided May 5, 1978

Appeal from decision of Idaho State Office, Bureau of Land Management, rejecting noncompetitive geothermal lease application I-14362.

Affirmed.

1. Geothermal Leases: Applications: Generally -- Geothermal Leases: Discretion to Lease -- Geothermal Leases: Lands Subject to

Where lands in issue formerly were included in a now terminated geothermal lease, and no Federal Register listing of units for re-leasing had been made as of time appellant filed her noncompetitive geothermal lease application, BLM properly rejected her offer in accordance with 43 CFR 3211.1. Appellant's argument that reasonable time for such listing had passed from termination of former lease to filing of appellant's offer does not state an exception to requirements of 43 CFR 3211.1.

APPEARANCES: Laura J. Spangler, Boise, Idaho, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Laura J. Spangler appeals from a January 9, 1978, decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting her noncompetitive geothermal lease application I-14362. In its decision, the State Office said:

The lands applied for are in the category of "formerly leased lands" by virtue of a prior terminated geothermal lease I-8342, involving the identical lands.

These lands will be available for leasing only in accordance with 43 CFR 3211.1(a)(b)(c)(d). Since these lands have not as yet been made available for leasing, your application is hereby rejected.

On appeal, Spangler argues:

The land in question was terminated on November 1, 1976, by Dow Chemical, U.S.A.

Since the time of termination, a reasonable amount of time has passed within which a prudent man could have placed this parcel on an availability list.

Therefore, following a Reasonable length of time and the Prudent Man Rule, knowing it is not the policy of the administration to withhold the leasing of public lands for any arbitrary reason or an unduly [sic] amount of time, I request that the lease be issued as applied for.

The applicable regulation, 43 CFR 3211.1 entitled "Releasing of formerly leased lands," in part states:

Lands available for noncompetitive leasing in canceled or relinquished leases or in leases which expire by operation of law at the end of their primary or extended terms or in leases which terminate by operation of law for nonpayment of rental pursuant to 30 U.S.C. sec. 1004, shall be subject to further leasing only in accordance with the provisions of this section. From time to time the authorized officer will publish in the FEDERAL REGISTER, post in each proper BLM office, and provide appropriate news coverage of:

(a) A list of leasing units composed of lands which are available for noncompetitive leasing and which were in canceled, expired, relinquished, or terminated leases.

(b) An announcement that application for leases on such lands will be received after a specific hour and date and that any applications filed during a specified simultaneous filing period beginning at that time will be regarded as simultaneously filed;

* * * * *

(d) Requirements for a complete application * * * will not be required until there has been a drawing and a consequent determination of priority, but must be filed prior to the issuance of the lease * * *. [Emphasis supplied.]

[1] The lands in issue on this appeal formerly were included in a now terminated geothermal lease held by the Dow Chemical Company, and no Federal Register listing of units for re-leasing had been made as of the time appellant filed her noncompetitive geothermal lease application. Thus, the BLM properly rejected her offer in accordance with 43 CFR 3211.1. Any other response would have been in contradiction of the regulations. Appellant's argument that a reasonable time for a Federal Register listing had passed from the termination of the former lease to the filing of her offer does not state a cognizable exception to the requirements of 43 CFR 3211.1.

Appellant seems to misperceive the Department's authority in geothermal leasing. Her argument assumes that the Secretary is required at some point to lease geothermal lands. The Geothermal Steam Act of 1970, 30 U.S.C. § 1001 et seq. (1970), provides that "the Secretary of the Interior may issue leases for development and utilization of geothermal steam * * *." (Emphasis supplied.) 30 U.S.C. § 1002 (1970). The decision to lease or not to lease is a matter over which the Secretary, or his delegate, exercises discretion. Geothermal leasing is not mandatory. Earth Power Corporation, 29 IBLA 37, 41 (1977); Eason Oil Company, 24 IBLA 221, 223-24 (1976). Appellant has not shown wherein there has been any abuse of this discretion in withholding the listing of the lands.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Joan B. Thompson
Administrative Judge

